



David Oppenheimer &lt;performanceimpressions@gmail.com&gt;

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**Image Use on Lancasterlawfirm.com**

15 messages

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**David Oppenheimer - Performance Impressions LLC**

&lt;dave@performanceimpressions.com&gt;

Mon, Jul 11, 2016 at 3:17 PM

To: zeno@lancasterlawfirm.com

Dear Mr. Lancaster,

I noticed that my photo of the Asheville skyline is being used on your homepage at the following URL: <http://www.lancasterlawfirm.com/>

Who put up my photo and where did they get it from?

Sincerely,

David Oppenheimer

--

David Oppenheimer

Performance Impressions LLC

PO Box 8105

Asheville, NC 28814

USA

(828) 273-9339

[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)[www.performanceimpressions.com](http://www.performanceimpressions.com)

---

**David Oppenheimer - Performance Impressions LLC**

&lt;dave@performanceimpressions.com&gt;

Wed, Jul 13, 2016 at 12:19

PM

To: zeno@lancasterlawfirm.com

Dear Mr. Lancaster,

Once again, I am asking who at your firm published my photo and where they got it from.

My company does not have a license on file for your use of my work, and I would like to get to the bottom of how my photo on your website.

Sincerely,

David

--

David Oppenheimer

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[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)

[www.performanceimpressions.com](http://www.performanceimpressions.com)

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**Zeno Lancaster** <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>

Wed, Jul 13, 2016 at 1:01 PM

To: David Oppenheimer - Performance Impressions LLC <[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)>

Hi Mr. Oppenheimer,

I apologize as I likely thought this was some sort of solicitation from a web designer because of the web address in the subject line. (We get those a lot).

I'm curious as to how you even came to know the picture was on our site? (But merely curious). Please send over proof of photo ownership and I'll be more than happy to either remove it from the site or pay you for a license. Thanks!

**From:** David Oppenheimer - Performance Impressions LLC [mailto:[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)]**Sent:** Wednesday, July 13, 2016 12:20 PM**To:** Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>**Subject:** Re: Image Use on Lancasterlawfirm.com

[Quoted text hidden]

**David Oppenheimer - Performance Impressions LLC**

Wed, Jul 13, 2016 at 5:08

<[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)>

PM

To: Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>

Dear Mr. Lancaster,

I am investigating this matter as a copyright infringement of my intellectual property.

Who obtained my photograph for your law firm's website? Where did they get my photograph from?

Do you have a receipt and usage license for where my work was obtained.

Who published my photograph on your website?

I hope to get an understanding of how this happened prior to making an offer to settle this matter outside of litigation.

Sincerely,

David Oppenheimer

--  
David Oppenheimer  
Performance Impressions LLC  
PO Box 8105  
Asheville, NC 28814  
USA  
(828) 273-9339  
dave@performanceimpressions.com  
www.performanceimpressions.com



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**Zeno Lancaster** <zeno@lancasterlawfirm.com>

Wed, Jul 13, 2016 at 5:17 PM

To: David Oppenheimer - Performance Impressions LLC <dave@performanceimpressions.com>

Hi Mr. Oppenheimer,

Please send over proof of photo ownership and I'll be more than happy to either remove it from the site or pay you for a license. I'm sure we just pulled it from a google image search of Asheville. Perhaps some site out there has your site up for public use. I wouldn't know. We "found it laying there" so it wasn't something we've purposefully stolen from anyone.

Like I said, if you can prove ownership, I'm happy to pay you for a license or remove the photo. Otherwise, I'm not sure what further help I can be for you.

If you'd let me know how you came across finding on my site, perhaps that would help us both find out how this happened. If you can't do that for me, I'm not sure I'm going to put any further energy into this. (I'm happy to help if you are)



**From:** David Oppenheimer - Performance Impressions LLC [mailto:dave@performanceimpressions.com]

**Sent:** Wednesday, July 13, 2016 5:09 PM

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[Quoted text hidden]

---

**David Oppenheimer - Performance Impressions LLC**

<dave@performanceimpressions.com>

To: Zeno Lancaster <zeno@lancasterlawfirm.com>

Wed, Jul 13, 2016 at 6:35

PM

Dear Mr. Lancaster,

Please cease and desist all unlicensed uses of my works.

Case 1:16-cv-00284-MR Document 1-6 Filed 08/23/16 Page 3 of 18

Because litigation is probable in this matter, please preserve all documents and communications related to your firm's infringement of my work as obligated by Rule 34 of the Federal Rules of Civil Procedure—besides removing my work from your website.

I will respond with a formal letter tomorrow.

Sincerely,

David Oppenheimer

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**Zeno Lancaster** <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>

Wed, Jul 13, 2016 at 8:06 PM

To: David Oppenheimer - Performance Impressions LLC <[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)>

You're not answering my questions. Please prove ownership and I'm happy to take it down or pay for it. That's the first question a court will ask you so not sure what I can do further for you. Did you have the photo copywritten? Fine show me or show ownership. Otherwise I can't help you. Not sure why you're being so combative.

I won't be paying you any money unless you prove ownership of course. Too many scams out there. Good luck.

Sent from my iPhone. Please excuse the brevity of the message and any typos.

On Jul 13, 2016, at 6:35 PM, David Oppenheimer - Performance Impressions LLC <[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)> wrote:

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I will respond with a formal letter tomorrow.

Sincerely,

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Case 1:16-cv-00284-MR Document 1-6 Filed 08/23/16 Page 4 of 18

[www.performanceimpressions.com](http://www.performanceimpressions.com)

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<image001.png>

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Zeno B. Lancaster IV  
Lancaster Law Firm  
Managing Attorney  
56 Central Ave., STE 203  
Asheville, NC 28801  
Ph. 828.505.8514  
Fax. 828.365.6046  
www.lancasterlawfirm.com

image001.png  
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**David Oppenheimer - Performance Impressions LLC**

<dave@performanceimpressions.com>

To: Zeno Lancaster <zeno@lancasterlawfirm.com>

Thu, Jul 14, 2016 at 12:23

PM

Dear Mr. Lancaster,

The infringed work in this matter is not available online for free use or in anyway indicated as such.

My photograph has clear notices of copyright in the metadata, caption, and watermark.

I have included my copyright registration for this work in the attached letter.

I appreciate your prompt attention to this matter.

Sincerely,

David Oppenheimer

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David Oppenheimer

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**Oppenheimer v. Lancaster Law Firm PLLC.pdf**

1035K

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**Zeno Lancaster** <zeno@lancasterlawfirm.com>

Thu, Jul 14, 2016 at 12:29 PM

To: David Oppenheimer - Performance Impressions LLC <dave@performanceimpressions.com>

Look Mr. Oppenheimer,

You've already threatened law suit after I've been more than cooperative. Whatever you sent isn't even something that appears on our site.

I'll double check on facebook. But if you can't answer my questions simply and instead want to threaten law suit, this will be our last communication. I'm not even sure what you're asking me to do here.



**Zeno B. Lancaster IV**  
Lancaster Law Firm  
Managing Attorney  
56 Central Ave., STE 203  
Asheville, NC 28801  
Ph. 828.505.8514  
Fax. 828.365.6046  
[www.lancasterlawfirm.com](http://www.lancasterlawfirm.com)

**From:** David Oppenheimer - Performance Impressions LLC [mailto:[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)]

**Sent:** Thursday, July 14, 2016 12:24 PM

**To:** Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>

**Subject:** Re: Image Use on Lancasterlawfirm.com

Dear Mr. Lancaster,

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[Redacted signature]

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Case 1:16-cv-00284-MR Document 1-6 Filed 08/23/16 Page 7 of 18

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Sent from my iPhone. Please excuse the brevity of the message and any typos.

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[Redacted signature]

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[Quoted text hidden]

[Quoted text hidden]

--

[Quoted text hidden]

[Redacted signature]



On Wed, Jul 13, 2016 at 1:01 PM, Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)> wrote:

Hi Mr. Oppenheimer,

I apologize as I likely thought this was some sort of solicitation from a web designer because of the web address in the subject line. (We get those a lot).

I'm curious as to how you even came to know the picture was on our site? (But merely curious). Please send over proof of photo ownership and I'll be more than happy to either remove it from the site or pay you for a license. Thanks!

<image001.png>

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**Sent:** Wednesday, July 13, 2016 12:20 PM

**To:** Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>

**Subject:** Re: Image Use on [Lancasterlawfirm.com](http://Lancasterlawfirm.com)

Dear Mr. Lancaster,

Once again, I am asking who at your firm published my photo and where they got it from.

My company does not have a license on file for your use of my work, and I would like to get to the bottom of how my photo on your website.

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[Redacted]

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[Redacted]

---

**Zeno Lancaster** <zeno@lancasterlawfirm.com>

Thu, Jul 14, 2016 at 12:32 PM

To: David Oppenheimer - Performance Impressions LLC <dave@performanceimpressions.com>

By the way, the photo we were using didn't have your watermark. I checked. I'm going to assume this is fraud but have nonetheless removed the photos. Thanks.



**From:** David Oppenheimer - Performance Impressions LLC [mailto:[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)]

**Sent:** Thursday, July 14, 2016 12:24 PM

**To:** Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>

**Subject:** Re: Image Use on Lancasterlawfirm.com

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David

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[Redacted]

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Dear Mr. Lancaster,

I noticed that my photo of the Asheville skyline is being used on your homepage at the following  
URL: <http://www.lancasterlawfirm.com/>

Who put up my photo and where did they get it from?

Sincerely,

David Oppenheimer

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[www.performanceimpressions.com](http://www.performanceimpressions.com)

[Redacted]

---

**David Oppenheimer - Performance Impressions LLC**

<dave@performanceimpressions.com>

Thu, Jul 14, 2016 at 1:05 PM

To: Zeno Lancaster <zeno@lancasterlawfirm.com>

What did you check? Where did you source my photograph from? Who at your firm sourced it?

My photograph has not appeared online without numerous notice of copyright accompanying it, besides on your firms's website and social media account.

[Quoted text hidden]

[Quoted text hidden]



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**Zeno Lancaster** <zeno@lancasterlawfirm.com>

Thu, Jul 14, 2016 at 1:30 PM

To: David Oppenheimer - Performance Impressions LLC <dave@performanceimpressions.com>

I'm sure we found it on google under Asheville downtown search or something, who knows. I don't remember.

You're obviously wrong about that. By definition of having the photo without your watermark, it's obviously online without anything attached to it somewhere. I would suggest you search google and find out who is posting it.



**Zeno B. Lancaster IV**  
Lancaster Law Firm  
Managing Attorney  
56 Central Ave., STE 203  
Asheville, NC 28801  
Ph. 828.505.8514  
Fax. 828.365.6046  
[www.lancasterlawfirm.com](http://www.lancasterlawfirm.com)

**From:** David Oppenheimer - Performance Impressions LLC [mailto:[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)]

**Sent:** Thursday, July 14, 2016 1:05 PM

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[Quoted text hidden]

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**David Oppenheimer - Performance Impressions LLC**

<dave@performanceimpressions.com>

Tue, Jul 26, 2016 at 4:47 PM

To: Zeno Lancaster <zeno@lancasterlawfirm.com>

Dear Mr. Lancaster,

I am following up on my offer to resolve this dispute. To establish that the photograph is indeed mine, please see where it is published on my Flickr account here: <https://www.flickr.com/photos/livemusicphotography/8719608037> Note the numerous notices of copyright.

Also, the copyright registration certificate in the letter I sent to you on July 14 is prima facie evidence that the work is mine, see 17 USC § 410(c). If your insurer has issued a claim number, please put me in direct contact with them. You may want to contact your insurer at this time if you have not already done so to prevent a denial of coverage due to not timely reporting this.

Please let me know if you need more time to formally respond.

Sincerely,

David Oppenheimer

--

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**Zeno Lancaster** <zeno@lancasterlawfirm.com>

Tue, Jul 26, 2016 at 4:58 PM

To: David Oppenheimer - Performance Impressions LLC <dave@performanceimpressions.com>

Mr. Oppenheimer,



The photo we used was obtained from google and had nothing of yours on it. In fact, how do I know it wasn't someone else's taken from the same spot?

Do what you need to do. We've done nothing wrong and I've taken it down, just in case someone else has scammed you and posted your photo without ownership online for public use, because I get that that's not fair. However, it's certainly not my doing. Good luck.



**From:** David Oppenheimer - Performance Impressions LLC [mailto:[dave@performanceimpressions.com](mailto:dave@performanceimpressions.com)]  
**Sent:** Tuesday, July 26, 2016 4:47 PM  
**To:** Zeno Lancaster <[zeno@lancasterlawfirm.com](mailto:zeno@lancasterlawfirm.com)>  
**Subject:** Re: Image Use on Lancasterlawfirm.com

Dear Mr. Lancaster,

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David Oppenheimer

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(828) 273-9338

dave@performanceimpressions.com  
www.performanceimpressions.com

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[Quoted text hidden]

---

**David Oppenheimer - Performance Impressions LLC**

Wed, Jul 27, 2016 at 10:19

<dave@performanceimpressions.com>

AM

To: Zeno Lancaster <zeno@lancasterlawfirm.com>

Dear Mr. Lancaster,

Google Images is a search engine and is not a photography repository.

My work which your law firm has infringed upon has not been published without a notice of copyright affixed anywhere else that I have ever seen.

Grabbing a photograph off of Google to use commercially for a law firm without establishing ownership and licensing rights is not only irresponsible, it is also reckless.

Because my work had numerous notices of copyright, this infringement should be considered willful opening door to enhanced statutory damages.

For you to establish that this was an innocent infringement in court, [you would need to establish a good faith belief](#) that you were entitled to use my work commercially, and also have to show that this belief was reasonable. Grabbing a work from Google without any inclination of whether it was a protected work or not is reckless and it seems that your firm does not have an articulable rational for using my work without licensing.

To me, there is no doubt that my work was the work that your firm copied and displayed. There is no mistaking my work. In this matter, the unique view created with the \$1000 graduated neutral density filter kit cannot be replicated. The work in this matter has more points to compare than a fingerprint and if needed, an expert witness will establish the infringed work is mine once this matter is brought to court. I am still trying to resolve this matter outside of litigation but your failing to address you and your firm's liability in this matter is seemingly leaving me no choice but to retain litigation counsel.

After August 19, 2016 when my current offer to settle will expire and be withdrawn, if my efforts to negotiate a pre-suit resolution of your infringement of my work continue to be evaded, litigation may be filed against you and your firm soon after without any further notice.

Sincerely,

David Oppenheimer

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**PERFORMANCE  
IMPRESSIONS®**

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